

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARCO JIMENEZ FERNANDEZ,

Defendant.

8:16CR270

ORDER

On May 5, 2017, Marco Jimenez Fernandez (“Fernandez”) pled guilty pursuant to a written plea agreement to possessing cocaine with intent to distribute, in violation of 21 United States Code sections 841(a)(1) and 841(b)(1). On August 18, 2017, the Court sentenced Fernandez to seventy months imprisonment followed by three years of supervised release. Fernandez did not appeal. He is currently confined at a federal facility in Oklahoma.

Now before the Court is Fernandez’s pro se Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Filing No. 75). As grounds for relief, Fernandez asserts his legal counsel was “poor and ineffective.” More specifically, Fernandez alleges his counsel pushed Fernandez to sign the plea agreement, promised he would receive a sentence below seventy months, and never discussed his “appeal rights in any way.” Fernandez also asserts he did not fully understand the legal proceedings because of his “limited knowledge of English and the law.” Fernandez asks the Court to reduce his sentence.

Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts requires the Court to complete an initial review of Fernandez’s § 2255 motion. Unless “it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief,” the Court must order

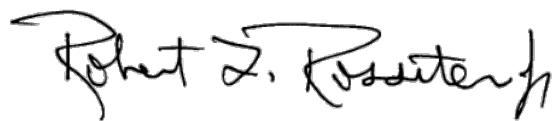
the United States Attorney to respond to the motion or “take other action the judge may order.” *Id.*

After initial review, the Court finds summary dismissal is not required in this case. The United States Attorney must file an answer or other response to Fernandez’s motion on or before March 14, 2018.

IT IS SO ORDERED.

Dated this 14th day of February, 2018.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr." The signature is fluid and cursive, with "Robert" and "Rossiter" being more distinct and "F." and "Jr." being smaller.

Robert F. Rossiter, Jr.
United States District Judge